

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TINA L. MCQUEEN, Administrator	:	CIVIL ACTION NO. 1:02cv155
of the Estate of Robert W. McQueen, Jr.	:	
	:	Judge Weber
Plaintiff,	:	
	:	
vs.	:	
	:	
BARGE VESSEL OR 4797, et al.	:	
	:	
Defendants.	:	
	:	
	:	

IN RE MIDLAND ENTERPRISES, INC. CIVIL ACTION NO. 01-02-639

**MOTION TO EXTEND PROPOSED CUT-OFF FOR JOINING OTHER
PARTIES AND FURTHER AMENDMENT OF THE PLEADINGS**

COME NOW Defendants Barge Vessel OR 4797, The Ohio River Company, Ohio River Company LLC, Midland Enterprises, Inc. and Midland Enterprises LLC's (hereinafter referred to collectively as "Midland"), and move the Court for an extension of thirty (30) days of paragraph 1 of the Agreed Scheduling Order setting cut-off for joining other parties and further amendment of the pleadings from December 30, 2003, to January 30, 2004.

As we more fully set forth in the attached memorandum, counsel for Midland and Consolidated Grain and Barge Company are in the middle of settlement discussions but the holidays have made contact difficult. An additional thirty (30) days is requested to determine whether in fact the remaining aspects of this action can be settled prior to institution of a third-

party action.

This motion is supported by the attached memorandum and separately filed Affidavit of Donald C. Adams, counsel for Midland.

Respectfully submitted:

s/**Donald C. Adams**

Adams Attorney Bar No.: 002701

Trial Attorney for Defendants, Barge Vessel OR 4797
and Midland Enterprises, Inc.

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MEMORANDUM

All matters in controversy between the Plaintiff in this case and Defendants have been settled and resolved. Releases are being exchanged and executed with the dismissal entry to be filed in the near future. At issue are the claims remaining between the various Defendants.

Pursuant to a Joint Submission of Proposed Agreed Scheduling Order, counsel agreed to proposed dates as set forth in the Agreed Scheduling Order attached to the Joint Submission.

The Joint Submissions set December 30, 2003 for cut-off for joining other parties and further amendment of the pleadings.

One of the issues remaining in this case is the position of Midland that it should have been provided insurance coverage as an additional insured under Consolidated Grain and Barge Enterprises' insurance policies, including a policy with MOAC. Among other arguments,

Midland maintains that its settlement payments in resolution of the Plaintiff's claims as well as defense costs should be born by Consolidated Grain or its insurance carrier under a duty to indemnify and duty to defend.

Settlement discussions are ongoing with counsel for Consolidated Grain and Barge Enterprises, but, the intervening holidays have slowed settlement discussions.

As indicated in the attached Affidavit of Donald C. Adams, he has been in contact with counsel for Consolidated Grain and Barge Enterprises, and Consolidated Grain has no objection to extension of the cut-off for joining other parties and further amendment of the pleadings to January 30, 2004.

In order to avoid the unnecessary filing of a third-party action and amendment of the pleadings if resolution is possible, Midland Enterprises, without objection of Consolidated Grain, respectfully request an additional thirty (30) days to attempt to resolve the remaining aspects of this action prior to filing complaints against additional parties.

Respectfully submitted:

s/Donald C. Adams

Adams Attorney Bar No.: 002701

Trial Attorney for Defendants, Barge Vessel OR 4797
and Midland Enterprises, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2003 I electronically filed the foregoing Motion to Extend with the Clerk of Courts using the CM/ECF system. I further certify that a copy of the foregoing has been sent by regular U.S. mail, postage prepaid, this 29th day of December 2003, to:

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s/**Donald C. Adams**
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